

The Feral Firefighter's Briefing Paper on HB 4309:

Amends Public Act 57 of 1988 to Eliminate Existing Labor Agreements, Seniority Rights, and Pension Benefits of Police & Firefighters Upon Forming a Emergency Services Authority

City leaders and some state legislators have blamed Michigan municipalities' budget problems on excessive police and firefighter's wages and benefits. However, the past decade has been financially difficult for Michigan municipalities. Local governments have been faced with large declines in income tax, property, and state shared revenues at the same time medical and pension payments have increased. Local governments have been forced to increase taxes, make deep budget cuts, lay off police and firefighters, and have obtained wage and benefit concessions from their employees.

But now, Governor Synder's proposed 2011-2012 budget eliminates *all* discretionary revenue sharing, placing an even greater financial burden onto the municipalities. However, as an incentive to adopt "best practices" (to be described in March 2011) cities will compete to receive a share of the cut revenue sharing funds. Some of these "best practices" will involve intergovernmental collaboration and/or consolidation of services.

However, in practice consolidation (by itself) does not always result in dramatic cost savings. This is especially true in the case of labor intensive functions such as police patrol officers and firefighters providing emergency response.

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The author of the Citizens Research Council (CRC) Report 357 claimed that some state laws need to be amended to remove "employee protection provisions" ("hold harmless clauses") that supposedly prohibit layoff of unnecessary employees, or require increasing employee compensation up to that of the highest paid of the merged departments.

These CRC claims ^{appear to be} ~~are~~ erroneous. The "hold harmless" clause of the Urban Cooperation Act (PA 7 of 1967) and other intergovernmental laws do not prohibit layoffs and only mandate employees are not placed in a "worse position." Further, the Miller-Canfield legal analysis by McGee & Trebilcock did not identify the employee protection provisions as posing legal barriers to consolidation. However, this misperception is prevalent among municipal leaders, the MML, and the Republican caucus.

But, the Urban Cooperation Act language is not clear regarding the assumption of labor contracts and the negotiation of a new contract. The Miller-Canfield paper suggested amendments to the laws to clarify the process of forming a new unified labor contract to "ensure that a new authority could begin to function under a single collective bargaining agreement within a relatively short time period." Their proposed amendments would quickly consolidate union contracts into a unified contract.

Last year, Senator Jansen and Hardiman introduced SB 1085 and SB 1086 which would have amended the Urban Cooperation Act to include language clearly stating that all bargaining units do not have to move to the highest wage and benefit levels after consolidation. Senator Jansen and Hardiman's bill was amended to clarify that existing labor contracts would be assumed by the new entity, until a new contract was put into place.

The Michigan Professional Firefighter's Union (MPFFU) President Docherty testified, "There is a misconception ... that contracts from an acquired system would remain in effect indefinitely, never allowing the Authority to decrease any wages or benefits for employees of the Authority. This also is not true. ... We worked [last session] ... to craft 2 bills [SB 1085/1086] that clarified all of these issues."

President Docherty continued, "SB 1085/1086 clarified that each employee did not have to be raised to the highest wage and benefits of each group. Each bargaining group would maintain their own contract until it expired. If one contract expired a year before the others, then it would be extended one year until the other contracts also expired. After all the contracts have expired, a new single contract would be negotiated with all employees in the Authority as one bargaining group. At that point all wages and benefits would be subject to change."

It seems this language would have satisfied the concerns of the MML and the House Republican Caucus with the "hold harmless clause" and to "negotiate a new contract." However, SB 1085 and SB 1086 died in the House last session.

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HB 4309 was introduced on February 22, 2011 to amend PA 57 of 1988. However, HB 4309 has nothing to do with addressing the legitimate concerns of removing the legal barriers to intergovernmental cooperation identified by McGee & Trebilcock (PA 57 doesn't even contain the "hold harmless" clause and it already has provision for the negotiation of a new unified contract).

HB 4309 would amend The Emergency Services Authorities Act (PA 57 of 1988) by deleting virtually all clauses that "guarantee labor contracts and employment rights in regard to the formation and reorganization of authorities" (HB 4310, HB 4311, and HB 4312 would do the same for consolidations under the Urban Cooperation Act, etc.).

Upon the formation of a fire authority, the current police or firefighter labor contract would be void, the Authority would then be able to unilaterally impose an entirely new contract onto the local.

In his February 24, 2011 testimony, MPFFU President Mark Docherty said, "What HB 4309 does is completely strip away any wages, seniority, healthcare, pensions, or any other benefits. ... I urge you to not remove the collective bargaining rights of firefighters and not pass HB 4309. ... "We would like to revisit the meaningful reforms that were placed in SB 1085/1086 last session. We believe this would completely address the concerns expressed above [PA 7 "hold harmless" clause and renegotiation of new authority contract]."

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"Knowing revenue sharing isn't being increased, we need to look at ways to help local communities and leaders stretch limited funds," stated Senator Mark Jansen, a leading proponent of government reforms." In their "The League's Prosperity Agenda", The MML listed several reforms that would "give communities all available tools to manage costs and control revenues":

- "prevent excessive costs for communities" by reforming PA 312 (Rep. Haveman introduced HB 4205 to *repeal* PA 312 which would give cities free rein to try to force deep cuts in police and firefighter wages, pensions, and health care benefits)
- "... provide resources to communities to get out of trouble" (i.e. giving the power to void contracts to Emergency Financial Managers)
- "Allow communities to consolidate without costing more" (void existing contracts and benefits, impose new contract; HB 4309, HB 4310, 4311, and 4312)

Notice that every one of the MML's "tools" gives the power to municipalities to break contracts and impose their terms on police and firefighters (among other public employee unions).

MPFFU President Mark Docherty said, "What HB 4309 does is completely strip away any wages, seniority, healthcare, pensions, or any other benefits.... All this bill does is to strip away the bargaining rights of the employees in an attempt to seek greater savings through massive reductions in wages and benefits without having to bargain those concessions. This was never the intent of consolidations or authorities."

Well, it is now. As Bruce Springsteen sang in "The Ghost of Tom Joad", "Welcome to the New World Order."

Governor Rick Synder says "Michigan is not Wisconsin," that he wants to "work with labor" and within collective bargaining. But the impact of repealing PA 312, Emergency Financial Managers, and allowing Authorities to void contracts will have a similar effect here in Michigan.

HB 4309 doesn't even pretend to solve any problems posed by supposed legal barriers to intergovernmental collaboration. PA 57 doesn't present any barriers to consolidation into fire authorities. HB 4309 is merely a backdoor way of stripping firefighters of their contract and pension rights and giving municipalities a way to achieve costs savings on the backs of police and firefighters.

1.) Why are Michigan municipalities exploring the possibility of intergovernmental collaboration to provide emergency services?

Some city leaders and state legislators have blamed Michigan municipalities' budget problems on excessive police and firefighter's wages and benefits. However, the past decade has been financially difficult for Michigan municipalities. Declines in income tax revenues resulted from manufacturing job losses and the continuing Great Recession. Property tax revenues have fallen with the collapse of the housing bubble. Medical premium costs have outpaced inflation. In addition, since 2001 state legislators have cut "revenue sharing" by 33% to municipalities, and taken those funds to plug gaps in the state budget. Finally, with the drop in investment returns over the past decade, municipalities are now required to resume/increase employer contributions to underfunded pension systems.

In part to make up for reduced state revenue sharing, many city leaders decided to stop (or reduce) making payments into "over-funded" police & fire pension funds during the "boom" years of the stock market. Now, with reduced investment earnings, some have blamed police and firefighters for the "increasing pension costs" that are the result of city leaders having to increase (or simply) resume making pension contributions to provide for police and firefighter retirement. (e.g. the City of Grand Rapids has paid little into the police/fire pension system for about 20 years!).

As a result of these difficult economic times, over the past decade local governments have increased taxes, made deep budget cuts, laid off police and firefighters, and obtained wage and benefit concessions from their employees.

But now, Governor Synder's proposed 2011-2012 budget eliminates *all* discretionary revenue sharing, placing an even greater financial burden onto the municipalities. However, as an incentive to adopt "best practices" (to be described in March 2011) cities will compete to receive a share of the cut revenue sharing funds. Some of these "best practices" will involve intergovernmental collaboration and/or consolidation of services.

Intergovernmental collaboration has the potential to provide services more efficiently. Collaboration may avoid duplication of effort, provide services or service levels that individual governments cannot afford to provide on their own, and deal with problems that transcend the boundaries of individual units. Collaboration in the provision of governmental services is one tool used by local governments to capitalize on economies of scale and improve the provision of services while reducing costs.

However, in practice consolidation (by itself) does not always result in dramatic cost savings. This is especially true in the case of labor intensive functions such as police patrol officers and firefighters providing emergency response.

2.) Would the consolidation of Metro Grand Rapids fire departments into a fire authority produce significant efficiencies and cost savings?

Over the past year, the cities of Grand Rapids, Kentwood, and Wyoming have been exploring the possibility of increased collaboration and/or consolidation of their fire departments in providing fire service to their communities at less cost.

The Citizen's Research Council of Michigan (CRC) discussed the potential savings of fire service collaboration in their 2009 report, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities" (Report 357). The CRC noted that these cities already collaborate by sharing training facilities, fire dispatch, and by providing mutual or automatic aid. To improve fire response, the CRC suggested cities "could build on the fire automatic aid agreements these cities have in place."

However, the CRC said consolidation would produce only "marginal" savings in the actual provision of emergency fire services: (p.22) "... emergency responses by the fire departments, tend to be very labor intensive." ... "Collaborative provision of [police] street patrol or fire responses would provide only marginal opportunities for savings because collaboration would do nothing to change the aggregate land area, population, or number of residential and business properties in these cities."

For example, the Citizen's Research Council wrote in "Approaches to Consolidating Local Government Services" (Report 354) that, (p. 8) "Consolidation of the City of Grand Blanc with Grand Blanc Township [showed] ... little savings to be achieved by consolidating the police departments due to the labor intensive nature of police patrol ..."

The CRC noted (p.22, Report 357) that, "One need not move to a full consolidation of police and fire departments. These cities could pursue collaboration on specific parts of police and fire department operations for which economies of scale may result in savings. ... with the less visible capital and technically intensive services ... fire inspectors could be provided regionally, ... dispatch, [firefighter] training, vehicle and equipment maintenance, record keeping, and other support functions [e.g. fire chiefs and administrative staff] could all be performed regionally."

In the Metro Grand Rapids, firefighters are staffed relatively thinly (especially in Wyoming). But, I believe some cost savings may result from the relocation of fire engines/stations to better cover portions of adjacent cities (if cities can agree on how to share costs). Consolidation would eliminate duplicated managerial and administrative positions. However, these savings may be marginal given the administrative overhead for fire departments is relatively low (e.g. City of Grand Rapids Fire has about 5% administrative overhead for labor costs).

Note: I would suggest contacting the City of Grand Rapids Fire Dept. for more detailed information on the feasibility of fire service collaboration in Metro Grand Rapids.

CRC Report 354: <http://www.crcmich.org/PUBLICAT/2000s/2008/rpt354.pdf>

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3.) Do "hold harmless" (or employee protection provisions) clauses in some Michigan state laws governing intergovernmental cooperation impede collaboration?

In their 2009 Report 357, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities," the Citizen's Research Council (CRC) said, (p. iv) "Large percentages of the budgets of these communities are dedicated to the provision of police and fire protection. The ability to achieve savings and maintain service levels without raising taxes begins by addressing the cost of these services." ... (p.22) "However, as long as the employee protection provisions remain in the Urban Cooperation Act and Emergency Service Authorities Act, a full consolidation of police and fire departments across these jurisdictions is not likely to be cost effective."

The CRC's 2007 Report 346, "Authorization for Interlocal Agreements and Intergovernmental Cooperation in Michigan," noted six of the 77 laws authorizing intergovernmental collaboration contained "employee protection provisions." These laws include the Urban Cooperation Act (PA 7 of 1967), PA 8 of 1967, PA 204 of 1967, and PA 57 of 1988.

In Report 357, the CRC claimed these provisions, (p. 7) "severely limit the ability of local governments to come together for joint service provision." ... "[by] prohibit[ing] local governments from using intergovernmental collaboration to displace employees currently engaged in providing the functions or services that are proposed for joint provision." ... "The result of these provisions is that intergovernmental collaboration cannot be used effectively to reduce the size of municipal staff. In fact, because of these provisions, consolidated service provision may cause the cost of that service to increase rather than decline."

The CRC ended their discussion of "laws that impede collaboration" with, (p. 8) "Government ... is especially labor intensive for the public safety services – police and fire protection – that consume the majority of the budgets for full service local governments. Laws that hinder the ability to achieve savings through collaboration put public officials in the difficult position of needing to reduce the service levels or eliminate those services completely to achieve savings."

The CRC concluded (p.33) by saying, "It will be necessary for state laws to be amended to better enable these Grand Rapids communities, and local governments throughout Michigan, to benefit from collaboration to the fullest extent possible. ... [employee protection] provisions in a few laws create circumstances wherein collaboration may increase the cost of service provision."

However, these CRC claims appear to be erroneous. The "employee protection provisions" of PA 57 (and PA 7, PA 8, and PA 204) *do not* prohibit layoffs of unnecessary employees, or require increasing employee compensation up to that of the highest paid of the merged departments

CRC Report 346: <http://crcmich.org/PUBLICAT/2000s/2007/rpt346.pdf>

CRC Report 357: <http://www.crcmich.org/PUBLICAT/2000s/2009/rpt357.html>

4.) Does the "employee protection provision" of PA 57 of 1988 prohibit the layoff of unnecessary employees when forming of a fire authority?

No, the "employee protection provision" of PA 57 of 1988 clearly allows for layoffs and elimination of unnecessary positions upon the formation of a fire authority.

In their 2009 Report 357, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities, the CRC claimed, (p.7) "Employee protection provisions ... prohibit local governments from using intergovernmental collaboration to displace employees currently engaged in providing the functions or services that are proposed for joint provision." ... "The result of these provisions is that intergovernmental collaboration cannot be used effectively to reduce the size of municipal staff."

In the case of PA 57, the CRC cited the provision [Sec. 10(1)], "...employees of a municipal emergency service whose duties are transferred to an authority formed under this act shall be given comparable positions of employment with the emergency service established by the authority, and shall maintain their seniority status and all benefit rights of the position held in the municipal emergency response service before the transfer."

However, the next paragraph of PA 57 [Sec.10(2)] clearly states, "If sufficient positions of comparable employment are not available for all employees at the time of transfer, a less senior employee who is not transferred to a comparable position shall be placed on layoff status ... The authority shall determine the number of positions necessary to perform any emergency service, and shall not be required to create or maintain unnecessary positions."

Clearly, the "employee protection provision" of PA 57 does not "hinder the ability to achieve savings through collaboration" by displacing excess personnel upon the formation of a fire authority. The CRC claim in Report 357 otherwise is erroneous.

In addition, the 2007 Miller-Canfield paper on "Legal Barriers to Intergovernmental Cooperation Agreements in Michigan" **does not mention the employee protection provision of Sec. 10(1) of PA 57 as a "legal barrier" that prohibits displacing unnecessary employees.**

CRC Report 357: <http://www.crcmich.org/PUBLICAT/2000s/2009/rpt357.html>

Miller-Canfield: https://www.destinationmi.com/documents/MillerCanfieldIGC_Whitepaper.pdf

M-C MML: http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf

5.) Does the "hold harmless" of the Urban Cooperation Act (PA 7 of 1967) and other intergovernmental laws (e.g. PA 8 and PA 204 of 1967) prohibit the layoff of unnecessary employees when forming interlocal agreements or making intergovernmental transfers?

The Citizen's Research Council (CRC) 2007 report, "Authorization for Interlocal Agreements and Intergovernmental Cooperation in Michigan", found 77 specific laws authorizing intergovernmental collaboration, and noted six laws with "employee protection" provisions. Three of these laws (PA7, PA 8, and PA 204 of 1967) contain the following "employee protection provision" or "hold harmless clause":

"An employee who is transferred to a position with the political subdivision shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits that the employee enjoyed as an employee of the acquired system."

In their 2009 Report 357, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities," the CRC claimed (p.7) these "Employee protection provisions ... impede prohibit local governments from using intergovernmental collaboration to displace employees currently engaged in providing the functions or services that are proposed for joint provision." ... "The result of these provisions is that intergovernmental collaboration cannot be used effectively to reduce the size of municipal staff."

However, I believe these employee protection clauses do not prohibit the layoff of unnecessary employees during the formation of interlocal agreements or intergovernmental transfers:

PA 7 of 1967 states, Sec. 5(g) "The employees who are necessary for the operation of an undertaking created by an interlocal agreement, shall be transferred ..."

PA 8 of 1967 states, Sec. 4(d)(i) "'Such employees as are necessary for the operation thereof shall be transferred to [the political subdivision]."

The employee protection clause only applies to an "employee who is transferred ..." If an employee is found to be "unnecessary" prior to the formation of a collaborative agreement, he could be laid off. I believe the intent of the employee protection clause was similar to that of PA 57 in requiring transferred employees to be given "comparable positions" with the same pay and benefits and conditions of work in the new entity.

And the authors of the 2007 Miller-Canfield paper on "Legal Barriers to Intergovernmental Cooperation Agreements in Michigan" appear to agree. They did not identify the employee protection provision of PA 7, 8, and 204 as a "legal barrier" that prohibits displacing unnecessary employees:

(p.7) By its terms, Act 8 [and PA 7] only requires the transfer of "employees ... *necessary for the operation*" of the transferred functions and responsibilities (emphasis added). Ostensibly, this does not require the transfer of all the employees of the governmental unit performing the function or responsibility transferred. However, as discussed further below, the transferring governmental unit may have greater obligations as the result of existing collective bargaining agreements and the attenuating requirements under Michigan labor laws. ..."

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CRC Report 346: <http://crcmich.org/PUBLICAT/2000s/2007/rpt346.pdf>

CRC Report 357: <http://www.crcmich.org/PUBLICAT/2000s/2009/rpt357.html>

Miller-Canfield: https://www.destinationmi.com/documents/MillerCanfieldIGC_Whitepaper.pdf

M-C MML: http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf

6.) Does the "employee protection provision" of PA 57 of 1988 require that all employees in a fire authority be raised to the highest wage & benefit level of the existing fire departments? Would the Authority be unable to negotiate a new contract?

In their 2009 Report 357, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities," the CRC claimed (p.7) employee protection provisions, "severely limit the ability of local governments to come together for joint service provision."

In the case of PA 57 of 1988, the CRC cited the provision, [Sec. 10(1)] "...employees of a municipal emergency service whose duties are transferred to an authority formed under this act shall be given comparable positions of employment with the emergency service established by the authority, and shall maintain their seniority status and all benefit rights of the position held in the municipal emergency response service before the transfer."

The CRC asserted (p.7) that, "In fact, because of these provisions, consolidated service provision may cause the cost of that service to increase rather than decline." Apparently, the CRC was referring to the following so-called "employee protection provision" found in 1967 PA 7, 1967 PA 8, 1988 PA 57, and 1967 PA 204:

"An employee who is transferred to a position with the political subdivision shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits that the employee enjoyed as an employee of the acquired system"

The Michigan Municipal League (MML) claims this employee protection clause is a barrier "that result in all bargaining units to move to the highest level." Similarly, the 2010 House Republican budget plan said, "Currently, when two or more units of government want to save money by consolidating departments ... they must take the most generous aspects of each individual union contract and apply that to everyone in the new department."

However, the author of CRC Report 357 failed to notice that PA 57 does **not** contain this provision. Instead, PA 57 has a different "employee protection provision" which clearly states that the Authority is bound by the existing contracts until they expire, employees are given a "comparable" job, and employee's seniority/benefits/pension rights follow them to the Authority:

Sec. 10(1) "...employees of a municipal emergency service whose duties are transferred to an authority formed under this act shall be given comparable positions of employment with the emergency service established by the authority, and shall maintain their seniority status and all benefit rights of the position held in the municipal emergency response service before the transfer."

PA 57 clearly does not require all wages and benefits to go up to the highest level of the acquired fire departments in a new contract. Every employee would keep the wages and benefits paid in his current department. As is the case with "two-tiered" systems, all employees will not have the same wages and benefits after the formation of the Authority. However, all wages and benefits would be subject to change when negotiating the new contract with the Authority.

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Michigan Professional Firefighter's Union (MPFFU) President Docherty testified that a "... concern expressed was that contracts from an acquired system would remain in effect indefinitely, never allowing the Authority to decrease any wages or benefits for employees of the Authority."

However, PA 57 states, 10(3) "When the duties of a municipal emergency service are transferred to an authority, the authority immediately shall assume and be bound by any existing labor agreements applicable to that municipal service for the remainder of the term of the labor agreement."

President Docherty continued, "Each bargaining group would maintain their own contract until it expired. ... After all the contracts have expired, a new single contract would be negotiated with all employees in the Authority as one bargaining group. At that point all wages and benefits would be subject to change."

If negotiations reached an impasse, then PA 312 requires binding arbitration to resolve the contract dispute. It's important to note that PA 312 does not drive public safety pay and benefits to the highest paid by police and fire departments in Michigan. Cities paying below the average of *comparable* departments may be required to pay closer to the average (with consideration of other factors including the city's ability to pay). But employers paying above the average may get relief. PA 312 tends to drive compensation to the average.

Note: The cities of Wyoming, Kentwood, and Grand Rapids are exploring further collaboration of fire services. Firefighter's base wages of Wyoming, Kentwood, and Grand Rapids are already close together: \$60,855, \$59,624, and \$ **, ***. After consolidation, moving all wages to the highest level would not result in a huge cost.

CRC Report 357: <http://www.crcmich.org/PUBLICAT/2000s/2009/rpt357.html>

MML 2011 Reforms: <http://www.house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee13-1-27-2011.pdf>

'10 GOP: <http://www.gophouse.com/publications/Budget%20Plan%20Framework%20Final.pdf>

MPFFU: <http://house.mi.gov/SessionDocs/2011-2012/Testimony/Committee13-2-24-2011.pdf>

Miller-Canfield: https://www.destinationmi.com/documents/MillerCanfieldIGC_Whitepaper.pdf

M-C MML: http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf

7.) Does the "hold harmless clause" in the Urban Cooperation Act etc. mandate all wages and benefits be raised to the level of the highest of the collaborating departments when establishing interlocal agreements or intergovernmental transfers? Would existing contracts remain in effect indefinitely?

In their 2009 Report 357, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities," the CRC claimed (p.7) the employee protection provisions found in some of the laws authorizing intergovernmental collaboration, "severely limit the ability of local governments to come together for joint service provision." PA7, PA 8, and PA 204 of 1967 all include the following "employee protection provision" or "hold-harmless clause":

"An employee who is transferred to a position with the political subdivision shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits that the employee enjoyed as an employee of the acquired system."

The Michigan Municipal League (MML) claimed this employee protection clause is a barrier "that result in all bargaining units to move to the highest level." Similarly, the 2010 House Republican budget plan said, "Currently, when two or more units of government want to save money by consolidating departments ... they must take the most generous aspects of each individual union contract and apply that to everyone in the new department."

Apparently the CRC was also referring to the employee protection provision where it claimed in Report 357 (p.7) that, "In fact, because of these provisions, consolidated service provision may cause the cost of that service to increase rather than decline."

But, the employee protection clause found in PA 7, 8, and 204 does not require the wages and benefits of transferred employees be automatically brought up to the highest level of existing contracts. Rather, transferred employees are "not placed in any worse position" with respect to their compensation. I believe the intent of the employee protection clause was similar to that of PA 57 requirement that transferred employees be given "comparable positions" with the same pay and benefits in the new entity.

And Michael McGee and Christopher Trebilcock, authors of the 2007 Miller-Canfield paper on "Legal Barriers to Intergovernmental Cooperation Agreements in Michigan," appear to agree. Their analysis did not identify the "hold harmless clause" of PA 7, 8, and 204 as a "legal barrier" that mandates bringing all employees up the highest wages and benefits of the old contracts. They viewed this clause as

However, the misperception that members from each bargaining group need to be paid the highest wage and the best benefits from each group is prevalent among municipal leaders. McGee and Trebilcock moderated the breakout session of the May 2007

Lansing conference on "Intergovernmental Cooperation in Michigan." Afterwards, they wrote in the conference's final report:

"... many municipalities view the current statutory framework ... negatively." ... it was noted that it [PA 312] could result in severely uneven labor compensation packages between two local units of government. ... combined with the "hold harmless" provisions ... it largely prevents local units of government from coming together ...

the "hold harmless" provision [ostensibly] requires that no employee be made worse off because of the cooperation. In reality, however, [the municipal leaders claimed] the provision only drives the wages of the lower compensated unit to that of the higher compensated unit. By offering identical wages and benefits for the same rank in two different labor units, this largely eliminates undue strain in employee relations."

CRC Report 357: <http://www.crcmich.org/PUBLICAT/2000s/2009/rpt357.html>

MML 2011 Reforms: <http://www.house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee13-1-27-2011.pdf>

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M-C MML: http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf

MSU: <http://web1.msue.msu.edu/msue/programs/slg/materials/Intergov%20Coop%20Conf%20FINAL%20Report%20revised%2010-3-07.pdf>

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The Urban Cooperation Act (PA 7) & PA 8 language is not clear regarding the assumption of labor contracts and the negotiation of a new contract.

Michael McGee and Christopher Trebilcock argued that "Although Act 8 [and PA 7] does not specify that the acquiring governmental unit must apply the terms of the transferred employees' collective bargaining agreement, if one exists, the Act in effect places such a burden by mandating that 'no employee who is transferred to a position with the political subdivision shall by reason of such transfer be placed in any worse position with respect to [the terms and conditions of employment.]'

"(p.7) ... Act 8 [& PA 7] requires that those employees retain all rights and benefits previously held, ... in accordance with the records or labor agreements from the acquired system." The governmental unit that acquires the functions or responsibilities assumes "the obligations ... with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees."

McGee and Trebilcock consider this language of PA 7 & 8 as a legal barrier to consolidation; "The end result is unmanageable multi-layer set of work rules, wages,

and benefits established through years of collective bargaining which effectively eliminate the sought after economic efficiencies”:

As a solution, they suggested amending the laws to clarify the process of forming a new unified labor contract: - “With careful and thoughtful drafting [laws including PA 7, 8, and 57] could be amended in a manner that provides sufficient certainty in the accretion of two or more bargaining units without effectively limiting collective bargaining over wages, benefits and other terms and conditions of working. ...” They believed judicious amendments will “help eliminate the problems associated with multi-layer collective bargaining by setting forth a uniform and objective mechanism to determine which terms and conditions shall apply to employees of the new authority. ... [and] would ensure that a new authority could begin to function under a single collective bargaining agreement within a relatively short time period.”

8.) What amendments have the Michigan Professional Firefighter's Union (MPFFU) proposed to amend the provisions of the Urban Cooperation Act (PA 7) etc. to address concerns about the "hold harmless" clause and establishment of a new unified contract?

The Michigan Professional Firefighter's Union (MPFFU) President Docherty testified, "There is a misconception ... that contracts from an acquired system would remain in effect indefinitely, never allowing the Authority to decrease any wages or benefits for employees of the Authority. This also is not true. ... We worked [last session] ... to craft 2 bills [SB 1085/1086] that clarified all of these issues."

SB 1085 and SB 1086 contained the following amendments:

"An employee who is transferred to a position with the political subdivision shall not, by reason of the transfer, be placed in any worse position UNTIL A NEW LABOR AGREEMENT IS IN PLACE with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits that the employee enjoyed as an employee of the acquired system."

(iii) NOTHING IN THIS ACT REQUIRES THAT THE POLITICAL SUBDIVISION PAY TO EMPLOYEES THE HIGHEST WAGES AND BENEFITS PREVIOUSLY PAID TO ANY OF THE EMPLOYEES OR THEIR PREEXISTING BARGAINING UNITS.

(iv) NOTWITHSTANDING SUBPARAGRAPH (iii), ALL EXISTING AND EXPIRED LABOR CONTRACTS WITH AN ACQUIRED SYSTEM SHALL BE ASSUMED BY THE POLITICAL SUBDIVISION AND REMAIN IN EFFECT UNTIL A NEW LABOR AGREEMENT IS IN PLACE.

President Docherty continued, "SB 1085/1086 clarified that each employee did not have to be raised to the highest wage and benefits of each group. Each bargaining group would maintain their own contract until it expired. If one contract expired a year before the others, then it would be extended one year until the other contracts also expired. After all the contracts have expired, a new single contract would be negotiated with all employees in the Authority as one bargaining group. At that point all wages and benefits would be subject to change."

MPFFU: <http://house.mi.gov/SessionDocs/2011-2012/Testimony/Committee13-2-24-2011.pdf>

9.) What amendments did McGee & Trebilcock propose to amend the provisions of the Urban Cooperation Act (PA 7) etc. to address concerns about the "hold harmless" clause and establishment of a new unified contract?

In May 2007, Michael P. McGee and Christopher M. Trebilcock of Miller-Canfield presented their paper, "Legal Barriers to Intergovernmental Cooperation Agreements in Michigan," at a Lansing conference on "Intergovernmental Cooperation in Michigan."

"The white paper authors ... [explained] that, in general, Michigan has a favorable climate for intergovernmental cooperation ... Regardless, many municipalities view the current statutory framework ... negatively."

"... it was noted that it [PA 312] could result in severely uneven labor compensation packages between two local units of government. ... combined with the "hold harmless" provisions ... it largely prevents local units of government from coming together ... the "hold harmless" provision requires that no employee be made worse off because of the cooperation. In reality, however, [the delegates claimed] the provision only drives the wages of the lower compensated unit to that of the higher compensated unit. By offering identical wages and benefits for the same rank in two different labor units, this largely eliminates undue strain in employee relations."

However, it's worth noting that in McGee and Trebilcock's white paper, they did not identify the "hold harmless" provision as a "legal barrier" to greater cooperation (actually, they said this clause in effect mandates the existing contracts must be assumed by the acquiring unit).

Instead, they focused on clarifying how a new unified labor contract would be formed: "With careful and thoughtful drafting [laws including PA 7, 8, and 57] could be amended in a manner that provides sufficient certainty in the accretion of two or more bargaining units without effectively limiting collective bargaining over wages, benefits and other terms and conditions of working. ..."

For PA 57 of 1967, the authors suggested adding the following language:

"When the duties of a municipal emergency service are transferred to an authority, the authority shall assume and be bound by the existing labor agreement applicable to that municipal service of the transferring municipality with the greatest number of employees being transferred to the authority. The authority shall be bound for the remainder of the term of the agreement." ...

Alternatively, Section 10(3) could be amended by providing that "the authority shall immediately assume and be bound by the existing labor agreement applicable to that municipal service for no more than six (6) months or until a new collective bargaining agreement is reached, whichever period is shorter."

For the Urban Cooperation Act (PA 7 of 1967) and PA 8, the authors suggested adding the following language:

For purposes of this Act, the transferred employees shall be subject to the terms and conditions set forth in the then existing collective bargaining agreement of the political subdivision to which the functions and responsibilities have been transferred or acquired. All terms and conditions of employment shall be immediately applied and the transferred employee shall obtain all the right and benefits under the collective bargaining agreement as if the employee had been an employee of the political subdivision to which the functions and responsibilities have been transferred or acquired.

McGee and Trebilcock believe these amendments will "help eliminate the problems associated with multi-layer collective bargaining by setting forth a uniform and objective mechanism to determine which terms and conditions shall apply to employees of the new authority. ... would ensure that a new authority could begin to function under a single collective bargaining agreement within a relatively short time period."

...

McGee and Trebilcock's proposed amendments are all intended to quickly consolidate union contracts into a unified contract immediately, or within a six month period.

The MSPFU proposed amendment of SB 1085/1086 would have worked in a similar fashion as McGee & Trebilcock's alternative suggestion for PA 57 (although a unified contract would be delayed, not taking effect until all of the existing contracts had expired). In addition, the MPFFU would amend PA 7 to clearly state that wages and benefits do not have to stay at the highest levels after existing contracts expire.

Miller-Canfield: https://www.destinationmi.com/documents/MillerCanfieldIGC_Whitepaper.pdf

M-C MML: http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf

MSU: <http://web1.msue.msu.edu/msue/programs/slg/materials/Intergov%20Coop%20Conf%20FINAL%20Report%20revised%2010-3-07.pdf>

10.) What amendments have the Michigan Municipal League (MML) and the Republicans proposed in the past to amend the provisions of the Urban Cooperation Act (PA 7) etc. to address concerns about the "hold harmless" clause and establishment of a new unified contract?

The Michigan Municipal League (MML) in their presentation, "The League's Prosperity Agenda" (January 27, 2011), listed several reforms that would "give communities all available tools to manage costs and control revenues." One of their "specific 2011 reforms" was "to allow communities to consolidate services without costing more due to barriers in the Act that result in all bargaining units to move to the highest level." Another sticking point is that "locals can't renegotiate union contracts", said Samantha Jones Harkins, legislative associate for the Michigan Municipal League.

In their budget plan last year, the Michigan House Republican Caucus claimed, "... the Urban Cooperation Act [PA 7 of 1967], which governs how local governments can enter into cooperation and consolidation agreements, often stands as a barrier to greater cooperation by increasing costs. Currently, when two or more units of government want to save money by consolidating departments ... they must take the most generous aspects of each individual union contract and apply that to everyone in the new department. This means it actually costs municipalities more to consolidate, defeating the purpose. *The Solution:* Allow the government entity to negotiate a new contract for the consolidating departments/services/municipalities"

Last year, Senator Jansen and Hardiman introduced SB 1085 and SB 1086 which would have amended the Urban Cooperation Act (PA 7 of 1967) and PA 8 of 1967 to include language clearly stating that all bargaining units do not have to move to the highest wage and benefit levels after consolidation:

(///) NOTHING IN THIS ACT REQUIRES THAT THE EMPLOYER PAY TO EMPLOYEES THE HIGHEST WAGES AND BENEFITS PREVIOUSLY PAID TO ANY OF THE EMPLOYEES OR THEIR PREEXISTING BARGAINING UNITS.

Senator Jansen and Hardiman's bill was amended to also include the language suggested by the MPFFU (similar to the proposed language of McGee & Trebilcock) to clarify that existing labor contracts would be assumed by the new entity, until a new contract was put into place.

It seems this language would have satisfied the concerns of the MML and the House Republican Caucus with the "hold harmless clause" and to "negotiate a new contract." However, SB 1085 and SB 1086 died in the House last session.

MML 2011 Reforms: <http://www.house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee13-1-27-2011.pdf>

'10 GOP: <http://www.gophouse.com/publications/Budget%20Plan%20Framework%20Final.pdf>

11.) How would HB 4309 amend the Emergency Services Authority Act (PA 57 of 1988) to remove legal barriers to consolidation? How would HB 4309 address concerns about the "hold harmless" clause and establishment of a new unified contract?

HB 4309 would amend The Emergency Services Authorities Act (PA 57 of 1988) by deleting virtually all clauses that "guarantee labor contracts and employment rights in regard to the formation and reorganization of authorities":

Sec. 10(1): "and shall maintain their seniority status and all benefit rights of the position held in the municipal emergency response service before the transfer"

Sec. 10(3): "When the duties of a municipal emergency service are transferred to an authority, the authority immediately shall assume and be bound by any existing labor agreements applicable to that municipal service for the remainder of the term of the labor agreement. Subject to the provision of subsection (2), the members and beneficiaries of any pension or retirement system or other benefits established by a municipal emergency service which is transferred to an authority shall have the same rights, privileges, benefits, obligations, and status with respect to the comparable systems established by the authority."

Note: HB 4310, HB 4311, and HB 4312 would also similarly delete employment rights and benefits from public employees involved in consolidations under the Urban Cooperation Act (PA 7 of 1967), PA 8, and PA 204)

Upon the formation of a fire authority, the current police or firefighter labor contract would be void, wiping away decades of negotiations (ordinarily an existing contract would continue until a new one is negotiated). The Authority would then be able to unilaterally impose an entirely new contract onto the local.

In his February 24, 2011 testimony before the House Local, Governmental, and Regional Affairs Committee, MPFFU President Mark Docherty said, "What HB 4309 does is completely strip away any wages, seniority, healthcare, pensions, or any other benefits. ... I urge you to not remove the collective bargaining rights of firefighters and not pass HB 4309.

Docherty continued, "We would like to revisit the meaningful reforms that were placed in SB 1085/1086 last session. We believe this would completely address the concerns expressed above [PA 7 "hold harmless" clause and renegotiation of new authority contract]."

Note: HB 4309 has nothing to do with addressing the legitimate concerns of removing legal barriers to intergovernmental cooperation identified by McGee & Trebilcock's paper. PA 57 doesn't even contain the "hold harmless" clause and it already has provision for the negotiation of a new contract after the existing contracts end.

MPFFU: <http://house.mi.gov/SessionDocs/2011-2012/Testimony/Committee13-2-24-2011.pdf>

12.) The Emergency Services Authorities Act (PA 57 of 1988) does not contain serious legal barriers to the formation of fire authorities. What purpose is achieved by HB 4309's removal of employment rights and benefits of police and firefighters?

City leaders and some state legislators have blamed Michigan municipalities' budget problems on excessive police and firefighter's wages and benefits. However, the past decade has been financially difficult for Michigan municipalities. Local governments have been faced with large declines in income tax, property, and state shared revenues at the same time medical and pension payments have increased. Local governments have been forced to increase taxes, make deep budget cuts, lay off police and firefighters, and have obtained wage and benefit concessions from their employees.

And now, Governor Synder's proposed 2011-2012 budget that eliminates *all* discretionary revenue sharing, will place an even greater financial burden onto municipalities budgets. However, cities can compete to adopt "best practices," including intergovernmental collaboration, to get back some of the cut revenue sharing funds.

However, in practice consolidation (by itself) does not result in dramatic cost savings. This is especially true in the case of labor intensive functions such as police patrol officers and firefighters. Then where will the "savings" come from to replace the lost revenue sharing? (which is going to fund tax breaks for business).

"Knowing revenue sharing isn't being increased, we need to look at ways to help local communities and leaders stretch limited funds," stated Senator Mark Jansen (R-Gaines Township), a member of the Senate Appropriations Committee and a leading proponent of government reforms" (Michigan Municipal League (MML) Nov/Dec 2009 newsletter).

The MML in their presentation, "The League's Prosperity Agenda" (January 27, 2011), listed several reforms that would "give communities all available tools to manage costs and control revenues":

- "prevent excessive costs for communities by reforming PA 312 (provides binding arbitration for police and firefighters). Last year, some Republican legislators and the Michigan Municipal League (MML) proposed "reforms" to PA 312. But now (apparently to compensate cities for the elimination of discretionary revenue sharing) Rep. Haveman introduced a bill to *repeal* PA 312 (HB 4205) which would give cities free rein to try to force deep cuts in police and firefighter wages, pensions, and health care benefits.
- "... provide resources to communities to get out of trouble" (i.e. giving the power to void contracts to Emergency Financial Managers). In their budget proposal last year, the Michigan House Republican Caucus wrote, "... any realistic attempt to reform government must acknowledge that labor contracts, pensions and benefits for public safety workers are threatening to bankrupt many local governments across Michigan. ... local units of government in financial distress [enter the EFM!] are not able to modify [i.e. cut] pay or benefits for public safety officials and firefighters."

- "Allow communities to consolidate without costing more" (void contracts and benefits when consolidate). In their budget plan last year, the Michigan House Republican Caucus claimed, "... Currently, when two or more units of government want to save money by consolidating departments ... they must take the most generous aspects of each individual union contract and apply that to everyone in the new department. This means it actually costs municipalities more to consolidate, defeating the purpose. *The Solution:* Allow the government entity to negotiate [i.e void old contract and impose] a new contract for the consolidating departments/services/municipalities"

...

Enter HB 4309 (along with HB 4310, 4311, and 4312) . . .

In his February 24, 2011 testimony before the Local, Governmental, and Regional Affairs Committee, MPFFU President Mark Docherty said, "What HB 4309 does is completely strip away any wages, seniority, healthcare, pensions, or any other benefits.... All this bill does is to strip away the bargaining rights of the employees in an attempt to seek greater savings through massive reductions in wages and benefits without having to bargain those concessions. This was never the intent of consolidations or authorities."

Well, it is now. After the formation of a fire authority, HB 4309 would allow the Authority to "rip up" the current police or firefighter labor contract and unilaterally impose a new contract onto the local. As a bonus, the municipalities could take away wages, seniority, and even pension rights.

Notice that every one of the MML's "tools" gives the power to municipalities to break contracts and impose their terms on police and fire unions (among others).

Governor Rick Synder says "Michigan is not Wisconsin," that he wants to "work within collective bargaining." However, it appears he is more subtle than Governor Walker's frontal assault on collective bargaining in Wisconsin. But the impact of repealing PA 312, Emergency Financial Managers, and allowing Authorities to void contracts will have a similar effect here in Michigan.

HB 4309 doesn't even pretend to solve any problems posed by supposed legal barriers to intergovernmental collaboration. PA 57 doesn't present any barriers to consolidation into fire authorities. HB 4309 is merely a backdoor way of stripping firefighters of their contract and pension rights and giving municipalities a way to achieve costs savings on the backs of police and firefighters.

Author's Note:

HB 4309 was introduced February 22, 2011. Last week, my knowledge of consolidation issues was limited to what I remembered from skimming through the Citizen's Research Council (CRC) Report 357 a couple of years ago. In my previous PA 312 briefing paper, I briefly touched upon consolidation issues as it related to PA 312.

This briefing paper is the result of my research on the so-called "impediments to consolidation". I wanted to put together a brief that my fellow firefighters and I could use to speak knowledgably about HB 4309 (and related bills HB 2011, HB 2011, and HB 2012) with citizens and our state representatives.

This briefing paper will be posted at <http://www.feralfirefighter.blogspot.com> . You can view the paper, and/or download it at [scribd.com](http://www.scribd.com) through the embedded link at the blog.

This brief has been entirely an independent, "feral", and unsanctioned effort. Although I've drawn on some the MPFFU's materials, it has not been reviewed by any of my Local or MPFFU union officers.

I've been a member of the City of Grand Rapids Fire Department for 20 years. However, the opinions expressed in this briefing paper are mine, and do not necessarily reflect those of other firefighters, Local 366, MPFFU, or The City of Grand Rapids Fire Department. Any errors or omissions contained in this brief are mine alone.

Feel free to contact me with any questions, comments, or corrections.

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